In the High Court of Judicature at Madras

Dated:13-03-2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.725 OF 1997

1.V.Ponnaiya(deceased)
2. G.S.Sukirtha Bai
3. K.P.Babi Stella
4. P.Jeyakumar alias Immanuel Doss
5. Joishi
6. Selvi. P.Shanthimery
7. P.Karunakaran

Appellants 2 to 7 are brought
on record as legal representatives
of the deceased Sole appellant
vide order of Court dated 28.2.2007
made in C.M.P.Nos.794 and 795/2007 ..Appellants(Plaintiffs)

v

Nandagopal ..Respondent(Defendant)

This second appeal is filed Under Section 100 of CPC against the judgment and decree dated 6.2.1997 made in A.S.No.133 of 1996 on the file of the Court of Subordinate Judge, Gobichettipalayam confirming the decree and Judgment dated 14.11.1996 made in O.S.No.314 of 1994 on the file of Court of District Munsif, Gobichettipalayam.

For Appellants : Mr.N.Damodaran
For Respondent : Mr.N.Maninarayanan

JUDGMENT

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This appeal has been preferred against the decree and Judgment in A.S.No.133 of 1996 on the file of the Court of Subordinate Judge, Gobichettipalayam. The plaintiff, who has filed the suit in O.S.No.134 of 1994 before the District Munsif, Gobichettipalaym for an order of bare injunction and lost the same before the trial Court as well as the first appellate Court has preferred this second appeal.

2. The short facts in the plaint relevant for the purpose of deciding this appeal are as follows:

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The disputed property is shown as "A B C I H" in the rough plan filed along with the plaint. It comprises of a house bearing door No.214 and a vacant space. The plaintiff, in the year 1970 came as a tenant for door No.214 under the landlord Nachiammal,W/o Palanigounder for a monthly rent of Rs.75/-. The said house bearing door No.214 is having an extent of east west on both sides 60 feet, north south on the west 22 feet, on the east 35 feet While, residing in the said house, the plaintiff has also encroached to an extent of 25 feet on the west and 13 feet on the south and he is in possession of the same adverse to the interest of the Tamil Nadu Government. The property shown as "G E C and D L and K F" belongs to Nachiammal as per sale deed. The plaintiff had constructed a toilet shown as "E F G P" in the rough sketch. The plaintiff has also put up a bath room and also a room shown as "J H" respectively in the plaint plan. The plaintiff has also put up a thatched partition at the point "T I" on the eastern portion of the suit property. Likewise, the plaintiff has also put up a thatched partition at the point " I H" shown in the rough sketch and he is in possession and enjoyment of the said portion for the past 24 years. The plaintiff is in possession and enjoyment of the portion marked as " L K G A H I" in the plaint plan. The Government has never obstructed the plaintiff from enjoying the above said portion in the suit property. The western boundary to the suit property belongs to P.L.Ramasamy. He is also having a common right in the well shown in the plaint plan at the point "A". The northern boundary of the suit property is a house belonging to Thangavel Chettiar. The compound wall of Thangavel chettiar separates the plaintiff's property on the north. Neither Thangavel Chettiar nor P.L.Ramasamy ever claim any right over the suit property.

2a) Nachiammal had entered into an agreement of sale with the plaintiff on 25.3.1986 in respect of door No.214 inclusive of the vacant site measuring 35 feet north south on both sides and 80 feet east west on both sides. On the date of executing the said sale agreement on 25.3.1986, the plaintiff has paid Rs.5,000/- towards advance of the sale consideration. The time stipulated for executing the sale deed is 30 days from 25.3.1986. Subsequently, on 25.6.1986, Nachiammal had received a sum of Rs.3,000/- from the plaintiff and agreed to extend the date of execution of the sale deed by another 30 days . In pursuant to the said sale agreement, the sale deed was executed by Nachiammal in favour of the plaintiff in respect of 1560 sq.ft, in the said suit for a sale consideration of Rs.18,600/- . As per the boundary recitals in the sale deed, the plaintiff is entitled to 85 feet east west on both sides and 35 feet north south on both sides. It has been specifically mentioned in the sale deed that the said Nachiammal is not responsible for the discrepancy in the measurement mentioned in the sale deed. Nachiammal's son, the defendant herein in the year 1993, tried to interfere with the possession of the plaintiff in the plaint schedule property claiming that he is also entitled to the share in the suit property. The

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plaintiff has approached the Tahsildar, Gobichettipalayam for issuance of patta in his favour for an extent of 85 feet east west and 35 feet north south on the basis of the measurements given in the sale deed and on the objection made by the defendant, the Tahsildar had stopped the issuance of patta in favour of the plaintiff. The defendant has no right or title in respect of the suit property . From 1970 onwards, the plaintiff is residing in the suit property with his family members and is paying house tax and electricity consumption charges. The defendant has made an attempt to remove the thatched median at the point "I H"(As marked in the plaint plan) in the suit property and thereby tried to disturb the peaceful possession and enjoyment of the suit property by the plaintiff. Hence the suit.

3. The defendant has filed a written statement contending that the plaintiff came to the suit property as a tenant only in the year 1980-81 and not in the year 1970 as alleged in the plaint. The plaintiff is not in possession of 60 feet on the east west and 22 feet on the north south and 35 feet on the east as alleged in the plaint. He is not in possession of the property adverse to the interest of the Tamil Nadu Government. There was no landlord and tenant relationship exists between the plaintiff and his vendor Nachiammal at any point of time. The plaintiff has not constructed any bath room at the point marked as "J" in the rough sketch . He has also not put up any thatched partition at the point "T I" or I H marked portion in the rough sketch. The bath room was constructed by Nachiammal. As per the agreement of sale dated 25.3.1986 between Nachiammal and the plaintiff, it was for 2800 sq.ft. only (85 feet x 35 feet) for a sale price of Rs.26,500/-. Since the plaintiff is not in a position to pay Rs.26,500/-, he had purchased only a lesser extent of 1560 sq.ft for a sale price of Rs.18,600/-. The suit property originally belonged to Dasappa Gounder. Subsequently, many plots have been formed in the suit property and many people are in possession and enjoyment of the plots. It is not a Government Poramboke land. After taking a sale deed for 1560 sq.ft. the plaintiff asked for an order of injunction in respect of 2800 sq.ft. The defendant has not made any attempt either on 5.4.1994 or 11.6.1994 to disturb the peaceful possession and enjoyment of the plaintiff's property which was purchased by him under the sale deed. The plaintiff is not in possession of the entire plaint schedule property. At the time of plaintiff's daughter's marriage, the plaintiff had altered his house purchased by him under the sale deed from Nachiammal. The suit claim is not maintainable. The plaint schedule is not the property purchased by the plaintiff under the sale deed dated 3.7.1986. Hence, the suit is liable to be dismissed.

4. On the above pleadings the trial Court had framed four issues. The plaintiff has examined himself as P.W.1 besides examining other witness P.W.2 and marked Exs A1 to A48. The defendant has examined as D.W.1 and exhibited Ex B1.

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5. After meticulously analysing both oral and documentary evidence, the learned trial Judge has come to a conclusion that the plaintiff is not entitled to any relief as prayed for in the plaint and accordingy dismissed the suit with costs. Aggrieved by the findings of the learned trial Judge, the plaintiff has preferred an appeal before the Court of Subordinate Judge, Gobichettipalayam in A.S.No.133 of 1996. The learned first appellate Judge, after due deliberation and scanning of the evidence, has dismissed the appeal thereby confirming the decree and judgment of the trial Court. Hence the plaintiff is before this Court by way of this second appeal.

6. The substantial questions of law involved in this appeal are

> " 1. Whether the Courts below erred in law and misdirected themselves in non-suiting the plaintiff in its entirity even with respect to the portions purchased by him under Ex A1 sale deed?
> 2. Is not the plaintiff entitled for permanent injunction with respect to plaint "A G K L I H A" portion by virtue of his long possession and enjoyment by putting up constructions especially when the defendant nor his predecessors in title have no right, title or possession with respect of the said portion?

7. The Points:

According to the plaintiff, he had purchased the plaint schedule property, particularly, door No.214 with a vacant space under Ex A1 sale deed. Ex A48 is the sale deed in favour of the vendor of the plaintiff viz., Nachiammal. Under Ex A48 sale deed, Nachiammal had purchased 60 feet east west on the northern and southern side and 30 feet north to south on the eastern as well as western side with a specific boundaries. But under Ex A1 sale deed, only a portion measuring 1560 sq.ft alone was conveyed by Nachiammal to the plaintiff. The specific extent mentioned under Ex A1 sale deed is 60 feet east west on the north and south and 30 feet north south on the east and north south 22 feet on the west. The property scheduled to the plaint is 80 feet on the east west on the north as well as on the south and 35 feet north south on the east as well as west. So admittedly, the plaint schedule property is more than the property purchased by the plaintiff . His predecessor-in-title has no right or possession under Ex P48 to the plaint schedule property. The plaintiff under Ex A1 has not purchased the extent mentioned in the plaint schedule property.

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8. The learned counsel appearing for the appellants relying on Roohnisha Beevi and 15 others-vs- A.M.M.Mahudu Mohamed and 29 others (1998 -1 L.W.244) contended that if there is any discrepancy in the extent and the boundary,the boundary alone shall prevail. The dictum in the said ratio is that determining the factors for identifying the property is based on the evidence supplied by boundaries, extent, survey numbers and lakhoms(paimash numbers). But as far as this case is concerned, there is no dispute with regard to the extent because under Ex A1, it has been categorically stated that the plaintiff has purchased the property with east west measurement of 60 feet on the north and south and north south measurement of 30 feet on the east and 22 feet on the west. In the plaint plan, the plaintiff has clearly identified the property purchased by him under Ex A1 as "G B C L K G". The plaintiff would admit that the property scheduled to the plaint is shown as "A G B C I H". According to the plaintiff, he is in possession of the portion shown as "A G K L I H" adverse to the interest of the Tamil Nadu Government. The Government is not a party to the suit and to show that he is in possession in the portion marked as "A G K L I H" against the interest of the Government, the plaintiff has not filed any "B" memos. It is the definite case of the plaintiff that a room in the portion marked as "H" and a bath room in the portion marked as "J" were constructed by him. As correctly observed by the Courts below, the plaintiff has not produced any documentary evidence to show that he has put up the bath room "J" as well as the room marked as "H" respectively in the rough sketch.

9. The learned counsel appearing for the appellants would contend that an order of injunction is granted at least in respect of the property which he had purchased under Ex A1. This request cannot at all be considered because in paragraph 6 of the plaint, the plaintiff would contend that the defendant had made an attempt to interfere in his possession on 5.4.1994 and also on 11.6.1994. Even in Paragraph 6 to the plaint, the plaintiff would admit that in connection with the attempt made by the defendant to interfere with the possession of the plaintiff on 5.4.1994, he had applied before the Tahsildar, Gobichettipalayam on 26.4.1994 for the issuance of a patta. But on the basis of the obstruction made by the defendant, the said Tahsildar had stopped the issuance of the patta in the name of the plaintiff. But with regard to this pleading in the plaint, there is absolutely no evidence let in by the plaintiff, while he was in the box as P.W.1 before the trial Court. The other cause of action stated in the plaint at paragraph 8 . is on 11.6.1994 at about 6.00p.m., the defendant had made an attempt to remove the thatched portion as per the rough sketch on the south of "I H" dividing line. But south of the suit property lies the garden of Arunthavaselvan. Absolutely there is no evidence let in to show that on 11.6.1994, the defendant had made an attempt to meddle with the thatched portion at the point "I H". Even the plaintiff as P.W.1 has not spoken to about the above

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said incident which alleged to have been taken place on 5.4.1994 and 11.6.1994. The remedy open to the plaintifif is to file a suit for declaration and not for an order of injunction in respect of the entire suit property which was not purchased by him under ExA1. Under such circumstances, I do not find any illegality or infirmity in the Judgment of the first appellate Court in A.S.No.133 of 1996 on the file of the Court of Subordinate Judge, Gobichettipalayam to warrant any interference from this Court. Points are answered accordingly.

10. In the result, the appeal is dismissed confirming the decree and Judgment in A.S.No.133 of 1996 on the file of the Court of Subordinate Judge, Gobichettipalayam with costs .

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Subordinate Judge,GObichettipalayam

2. The District Munsif , Gobichettipalaym

3. The Record Keeper, V.R. Section, High Court, Chennai.

+ One cc to mr. N. Damodaran, Advocate SR 15411

+ One cc to Mr. N. Maninarayanan Advocate sR 15452.

PV (co)

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